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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,677	08/03/2001	Walter August Maria Broeckx	7419	6597

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EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1751	8

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/890,677	Applicant(s) BROECKX ET AL.	
	Examiner Gregory R. Del Cotto	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sh et with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 August 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *13-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *13-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *7* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. Claims 13-23 are pending. Note that, the preliminary amendment filed 8/3/01 has been entered.

Specification

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Priority

Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

Applicant has not, as the first sentence of the specification, claimed priority to the provisional applications under 35 USC 119(e). Accordingly, priority has not been granted.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 13, 14, 17, 18, and 20-23 are rejected under 35 U.S.C. 102(b) as anticipated by Cao et al (US 4,828,723).

Cao et al teach a non-aqueous liquid heavy duty laundry detergent composition n the form of a suspension of builder salt in liquid nonionic surfactant is stabilized against phase separation by the addition of small amounts of low density filler, such as hollow plastic or glass microspheres. The low density particulate filler is added in an amount to equalize the densities of the continuous liquid phase and the dispersed phase. See Abstract. The low density filler may be any inorganic or organic particulate matter having effective densities in the range of from about 0.01 to 0.5 g/cc measured at room temperature. The types of inorganic and organic fillers which have low bulk densities are generally hollow microspheres of microballoons. Inorganic microspheres such as various organic polymeric microspheres or glass bubbles.

Specifically, Cao et al teach a non-aqueous built laundry detergent composition containing 36.4% nonionic surfactant, 9.8% diethylene glycol monobutyl ether, 29% sodium tripolyphosphate, 1.9% Sokolan CH 9786, 0.3% bentone 27, 10.6% sodium perborate monohydrate, 4.3% tetraacetylethylenediamine, 1% carboxymethyl cellulose, 1% Dequest 2066, 0.5% enzyme, 4% Q-cell 400, 0.5% perfume, 0.4% TiO_2, 0.3% optical brightener, etc. Note that, Q-cell is a hollow filler having a particle size range of 10 to 200 microns and an effective density of 0.16 to 0.18 g/cc. See column 23, lines 35-60. Note that, the Examiner asserts that the Q-cell hollow filler material as taught by

Cao et al would inherently have gases (air) inside its core as recited by the instant claims. Accordingly, the broad teachings of Cao et al anticipate the material limitations of the instant claims.

Claims 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cao et al (US 4,828,723).

Cao et al are relied upon as set forth above. However, Cao et al do not specifically teach a laundry detergent composition containing the specific low density expandable particles in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a laundry detergent composition containing the specific low density expandable particles in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teaching of Cao et al suggest a laundry detergent composition containing the specific low density expandable particles in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 13, 14, 17, 18, and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2,168,377.

'377 teaches stable liquid dishwashing detergents containing from about 155 to about 50% of an anionic surfactant, from about 1% to about 15% of a water-insoluble abrasive having a particle diameter of from about 5 to about 250 microns, from about

0.1% to about 5% of a colloidal clay suspending agent, from about 0.05% to about 3% of a water-insoluble particulate filler material having a diameter of from about 1 to about 250 microns and a density of from about 0.01 to about 0.5g/cc and from about 40% to about 75% of water. See page 1, lines 30-50. Examples of the water-insoluble particulate filler material include thermoplastic microspheres described in US 3,615,972, US 3,864,181, and US 4,006,273. Specifically, '377 teaches a detergent composition containing 4.9% sodium coconutalkylsulfate, 24.1% sodium coconutalkyl ethoxy(1) sulfate, 2.8% coconutalkyl dimethyamine oxide, 7.3% ethanol, 3.1% sodium sulfosuccinate, 5% Celite 319 abrasive, 0.85% sodium bentonite clay, 0.5% glass microspheres (density 0.15 g/cc), and the balance, water. See page 5, lines 10-40. Note that, the Examiner asserts that the glass microspheres material as taught GB 2,168,377 would inherently have gases (air) inside its core as recited by the instant claims. Accordingly, the broad teachings of Cao et al anticipate the material limitations of the instant claims.

Claims 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2,168,377 (US 4,828,723).

'377 are relied upon as set forth above. However, '377 does not specifically teach a laundry detergent composition containing the specific low density expandable particles in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a laundry detergent composition containing the

specific low density expandable particles in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teaching of '377 suggests a laundry detergent composition containing the specific low density expandable particles in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 13-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,503,876. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-16 of US 6,503,876 encompass the material limitations of the instant claims.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
September 19, 2003